



Federal Communications Commission
Washington, D.C. 20554

August 10, 2011

DA 11-1378

Via Electronic Delivery

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Dear Counsel:

This letter reduces to writing advice given to the parties during a telephone call on Friday, August 5, 2011.¹ By way of background, in connection with the Commission's review of AT&T Inc. ("AT&T") and Deutsche Telekom AG's ("DT") applications for consent to transfer control and assign licenses held by T-Mobile USA, Inc. to AT&T (the "Merger Proceeding"), the Commission has placed information contained in the Numbering Resource Utilization and Forecast ("NRUF") reports filed by carriers engaged in the provision of wireless telecommunications services ("Wireless Carriers") into the record.² These reports contain disaggregated and carrier-specific local number portability ("LNP") data related to the Wireless Carriers. The Commission recognizes that such disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from general public disclosure under 5 U.S.C. § 552(b)(4).³

¹ On the call were counsel for AT&T Inc., Deutsche Telekom AG, the Bursor Law Firm, and a representative from AT&T, Inc.

² See 47 C.F.R. § 1.907.

³ See *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 7574, 7607 ¶ 78 (2000).

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Even though the Commission has recognized that NRUF reports and LNP data are highly sensitive, it is also mindful of the right of the public to participate in proceedings in a meaningful way. Therefore, consistent with its past practice,⁴ the Commission determined that the NRUF reports and LNP data (collectively, the “Highly Confidential Information”) would not be made available to the public in the Merger Proceeding other than by the terms of an NRUF/LNP Protective Order, which would limit access to, *inter alia*, a party’s Outside Counsel of Record and their Outside Consultants and experts whom they retain to assist them in the proceeding.⁵

On May 9, 2011, Bursor & Fisher, P.A., a law firm situated in New York, New York (“Bursor Law Firm”), submitted Acknowledgements of Confidentiality pursuant to the terms of the Protective Order requesting access to the Highly Confidential Information for four of its attorneys. The letter identified no party that the Bursor Law Firm represents in the Merger Proceeding. AT&T and DT filed a joint opposition on May 12, 2011, arguing that the Bursor Law Firm was involved in lawsuits against AT&T and raising concerns about how the Highly Confidential Information would be used. The Bursor Law Firm responded on May 23, 2011, stating that it had been retained by “numerous AT&T and T-Mobile non-commercial wireless customers in connection with this proceeding,” although it failed to identify any such clients. It further disagreed with AT&T’s argument that the risks of providing access to Highly Confidential Information to the Bursor Law Firm are similar to the risks of providing access to counsel engaged in Competitive Decision-Making. On June 20, 2011, the Bursor Law Firm submitted a letter into the Merger Proceeding docket, after the close of pleadings, attaching a Declaration of Colin B. Weir, an economist. Additionally, in late July, the Bursor Law Firm filed 11 arbitration cases against AT&T seeking to block the merger. We note that a web site set up by the Bursor Law Firm is designed to solicit further clients to file arbitrations against AT&T.⁶

We have considered carefully the arguments made by the Bursor Law Firm and the objections made by counsel for AT&T and DT. During a telephone call on August 5, 2011, we advised the parties that we are upholding the objection filed by AT&T and DT and that, accordingly, the Bursor Law Firm will not be allowed to have access to the Highly Confidential Information. We took this action principally because, as noted above, the Bursor Law Firm has commenced numerous arbitrations against AT&T and is threatening more. In contrast, it has made only a minimal filing in the Merger Proceeding, which was made after the pleading cycle had closed.

⁴ See, e.g., *AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket 08-246, Protective Order, 24 FCC Rcd 13915 (WTB 2009) and *Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket 08-95, Protective Order, 23 FCC Rcd 11401 (WTB 2008).

⁵ *Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Protective Order, 26 FCC Rcd 6031 (WTB 2011) (the “Protective Order”). Capitalized terms not defined herein shall have the meanings ascribed to them in the Protective Order.

⁶ <http://www.fightthemerger.com/> (visited August 8, 2011). We understand that, to date, the Bursor Law Firm has filed 26 arbitrations against AT&T and nearly 1,000 Notices of Dispute, as a precursor to filing arbitration demands.

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The imbalance between the Bursor Law Firm's participation in the Merger Proceeding and its extensive litigation activities leads us to conclude that there is an unacceptable likelihood that the request for access to the Highly Confidential Information is directed at impermissible litigation uses rather than genuine participation in our administrative proceeding.

Sincerely,

Rick Kaplan
Chief, Wireless Telecommunications Bureau

cc: Joan M. Marsh – AT&T